

ORDINANCE NO. O-2023-104

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES," ARTICLE IX., "RESIDENTIAL CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATING TO ADOPTION OF THE 2021 INTERNATIONAL RESIDENTIAL CODE WITH AMENDMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, as part of the ongoing recodification and review of City ordinances, it is necessary to amend certain chapters of the Code to reflect current policies and procedures of the City and to be consistent with changing state and federal statutes; and

WHEREAS, Texas Local Government Code Section 214.212(a) adopts the International Residential Code as the standard municipal residential building Code in the State; and

WHEREAS, Texas Local Government Code Section 214.212(b) states that the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality; and

WHEREAS, Texas Local Government Code Section 214.212(c) states that municipalities may establish procedures to adopt local amendments to the International Residential Code, as well as for the administration and enforcement thereof; and

WHEREAS, Texas Local Government Code Section 214.213(a) provides that the International Residential Code and the International Building Code do not apply to the installation and maintenance of electrical wiring and related components; and

WHEREAS, Texas Local Government Code Section 214.213(b) states that a municipality is not required to review and consider adoption of amendments to the International Residential Code or the International Building Code regarding electrical provisions; and

WHEREAS, the 2015 version of the International Residential Code with amendments is currently in effect; and

WHEREAS, the 2021 International Residential Code with amendments as recommended by the Construction Board of Adjustment and Appeals should be adopted;

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 217.042(a) provides that a home rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent the summarily abate and remove a nuisance; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 6, "Buildings and Structures", Article IX., "Residential Code", is hereby amended by amending Section 6-150 to read as follows:

Section 6-150. Residential code adopted.

The 2021 Edition of the International Residential Code, as amended in Section 6-151 is hereby adopted by reference and incorporated herein. Copies of the Residential Code and amendments thereto are available in the Building Inspection Division of the Development Services Department, and in the City Clerk's office. (Ord. 0-2001-63, 12/5/01) (Ord. No. O-2007-11; 1/24/07) (Ord. No. O-2013-27; 3/27/13) (Ord. No. O-2018-14; 1/24/18) (Ord. No. O-2023-104; 10/25/23)

PART 2: That Tyler City Code Chapter 6, "Buildings and Structures", Article IX., "Residential Code", is hereby amended by deleting current Section 6-151 in its entirety, and adopting a new Section 6-151 to read as follows:

Section 6-151. Amendments to residential code.

The 2021 International Residential Code, as adopted in Section 6-150, is amended as follows:

a. Section R102.7 is amended to read as follows:

R102.7. Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the International Fire Code or any other code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

b. Section R103.1 is amended to read as follows:

R103.1. Enforcement agency. The Building Services Department is the enforcement agency. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

c. Section R103.2 is amended to read as follows:

R103.2. Appointment. The Chief Building Official or designee is hereby appointed as the building official for purposes of this code.

d. Section R104.8.1 is amended by adding a sentence at the end to read as follows:

Indemnification of City officials, City employees, and members of City Council appointed boards is governed by City Code Section 2-62.

e. Section R112 is deleted in its entirety and a new Section R112 is adopted as follows:

R112. Construction Board of Adjustment and Appeals

R112.1. Appointment. There is hereby established a board to be called the Construction Board of Adjustment and Appeals, which shall consist of seven members. The Board shall be appointed by the applicable governing body.

R112.2. Membership and Terms.

R112.2.1. Membership. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. At least one member shall have either a Master Electrician's license or be a licensed electrical engineer, but if this requirement cannot be met, the membership requirement may also be met by Board members in other businesses or professions. A majority of the Board shall be City of Tyler residents, while a minority may reside in the City's extraterritorial jurisdiction. A board member shall not act in a case in which the member has a personal or financial interest. Terms shall be as set forth in City Code Section 1-20.

R112.2.2. Quorum and Voting. A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.

R112.2.3. Secretary of Board. The Building official shall act as secretary of the board and shall make a detailed record of all of its proceedings, which shall set forth the reasons for its decision, the vote of each member, and the absence of a member and any failure of a member to vote.

R112.3. Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in 112.4, to hear appeals of decisions and interpretations of the Building official and consider variances of the technical codes.

R112.4. Appeals

R112.4.1. Decision of the Building Official. The owner of a building, structure or service system, or duly authorized agent, may appeal a decision of the Building official to the Construction Board of Adjustment and Appeals whenever any one of the following conditions is claimed to exist:

1. The Building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
2. The provisions of this code do not apply to this specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case.

4. The true intent and meaning of this code or any of the regulations there under have been misconstrued or incorrectly interpreted.

R112.4.2. Variances. The Construction Board of Adjustment and Appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
2. That the special conditions and circumstances do not result from the action or inaction of the applicant.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.
4. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
5. That the grant of the variance will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and welfare.

R112.4.2.1. Conditions of the Variance. In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

R112.4.3. Notice of Appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the Building official. Appeals shall be in a form acceptable to the Building official.

R112.4.4. Unsafe or Dangerous Buildings or Service Systems. In the case of a building, structure or service system which, in the opinion of the Building official, is unsafe, unsanitary or dangerous, the Building official may, in the order, limit the time for such appeals to a shorter period.

R112.5. Procedures of the Board.

R112.5.1. Rules and Regulations. The board shall establish rules and regulations for its own procedure not inconsistent with City rules and ordinances, and the provisions of this code. The board shall meet on call of the chairperson. The board shall meet within 30 calendar days after notice of appeal has been received.

R112.5.2. Decisions. The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A copy of the decision shall be sent by mail or otherwise to the

appellant. Every decision of the board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

- f. Section R113.4 is amended by adding a sentence at the end to read as follows:

Penalties for violations of this code are set forth in City Code Section 1-4.

- g. Section 302.5.1 is amended by adding an exception, to read as follows:

Doors shall not be self-latching and equipped with a self-closing or automatic-closing device.

Exception. A combination smoke/CO-detector may be installed within 3' of the door opening, per the manufacturer's specifications, in lieu of the above requirement that doors shall self-latching and equipped with a self-closing or automatic-closing device.

- h. Section 315.2.1 is amended to read as follows:

R315.2.1. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages; or in dwelling units within which fuel-fired appliances are installed that do not have attached garages; or in dwelling units that have attached garages.

- j. Section 320 is deleted in its entirety.

- k. Figure R403.3 (1) is deleted in its entirety.

- l. Section R506.2.3 is amended by amending the first sentence to read as follows, and keeping the existing Exceptions:

R506.2.3. A minimum 6-mil vapor retarder conforming to ASTM E1745 Class A requirements shall be placed between the concrete floor slab and the base course or the prepared subgrade where a base course does not exist.

- m. Section M1305.1.3 is amended by amending the first sentence to read as follows:

Attics containing appliances requiring access shall be provided with an opening and a clear and unobstructed passageway large enough to allow removal of the largest appliance, but not less than thirty-six inches high and 22 inches wide and not more than twenty feet (20') in length when measured along the centerline of the passageway from the opening to the appliance.

- n. Add a new Section M1305.1.3.2 as follows:

M1305.1.3.2. HVAC systems accessed with a pull-down stairway. When a HVAC system covered by this Code is accessed with a pull-down stairway, such pull-down stairway shall be rated for 250-pound capacity.

o. Add a new Section M1305.1.3.3. as follows:

M1305.1.3.3. Access panels in ceiling. Where the access panel is installed in a ceiling, flooring shall extend thirty inches (30") on three (3) sides of the opening. The flooring shall be sized per Table R503.1 of the 2006 International Residential Code.

p. Amend Section P2503.5 to read as follows:

P2503.5 Drain, waste and vent systems testing. Rough-in and finished plumbing installations of drain, waste, and vent systems shall be tested in accordance with Sections P2503.5.1 and P2503.5.2.

P2503.5.1 Rough Plumbing. DWV systems shall be tested on completion of the rough piping installation by water or for piping systems other than plastic, by air with no evidence of leakage.

Either test shall be applied to the drainage system in its entirety or in sections after rough piping has been installed, as follows:

1. Water test. Each section shall be filled with water to a point not less than 10 feet (3048 mm) above the highest fitting connection in that section, or to the highest point in the completed system. Water shall be held in the section under test for a period of 15 minutes. The system shall prove leak free by visual inspection.
2. Air test. The portion under test shall be maintained at a gauge pressure of 5 pounds per square inch (psi) (34 kPa) or 10 inches of mercury column (34 kPa). This pressure shall be held without introduction of additional air for a period of 15 minutes.

q. Appendices A, B, C, D, and N are adopted.

r. Delete Appendices E, F, G, H, I, J, K, L, M, O, P, Q, R, S, T, and U.

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4. That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, or later. The effective date of this Ordinance shall be January 1, 2024.

PASSED AND APPROVED this 25th day of October, A. D., 2023.



DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK



DEBORAH G. PULLUM,
CITY ATTORNEY